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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)	
50588.356	

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Application Number	Filed
09/871,415	05/30/2001
First Named Inventor	
Stephen G. Perlman	
Art Unit	**Examiner**
2131	Moorthy, Aravind K.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☑ attorney or agent of record. Registration number 43,548
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

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May 15, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

Pursuant to the Pre-Appeal Brief Conference Pilot Program, Applicant request review of the rejection of claims 23-29, 31-41, 43-45, 56, and 57 in the above-referenced application. Clear errors in fact have been made and essential elements required to establish a *prima facie* rejection are missing. In the Office Action mailed February 14, 2006 ("Office Action"), claims 23-29, 31, 32, 36-40 and 56 were rejected based on U.S. Pat. No. 6,154,206 to Ludtke ("Ludtke"), claims 41, 43, 44 and 47-49 were rejected based on U.S. Pat. No. 5,504,816 to Hamilton et al. ("Hamilton"), claims 33-35 were rejected based on Ludtke in further view of U.S. Pat. No. 6,542,610 to Traw et al. ("Traw"), and claim 45 was rejected based on Hamilton in further view of Traw. The Office Action did not address claim 57.

1. Ludtke clearly does not teach or suggest simulcasting two versions of the same group of channels using two different types of encryption.

Claim 29, as it currently stands in the application, includes, among other things:

> ***encrypting a first group*** of multimedia channels using conditional access ("CA") encryption to produce a first group of encrypted multimedia channels;
>
> ***encrypting said first group*** of multimedia channels using a ***different type of encryption*** to produce a second group of encrypted multimedia channels;
>
> ***simulcasting*** said first group of encrypted multimedia channels with said second group of encrypted multimedia channels to a plurality of multimedia subscribers....

New multimedia receivers may use advanced types of encryption as compared to legacy multimedia receivers. The different types of encryption are not interchangeable. For example, the legacy multimedia receivers cannot decrypt the more advanced types of encryption that the new multimedia receivers are able to decrypt.

According to the claimed invention, a first group of multimedia channels is encrypted using *two different types of encryption.* Thus, after encryption, the two encrypted groups are two versions of the same multimedia content. Each version includes the content of the first group of multimedia channels, but with a different

encryption. The two versions are then ***broadcast at the same time*** (e.g., simulcast) to subscribers. For example, Figure 16 (reproduced below) of the present application shows two versions of "premium" digital channels being broadcast at the same time. A first version (see element 1626) is encrypted using standard encryption, and a second version (see element 1628) is encrypted using alternate encryption.

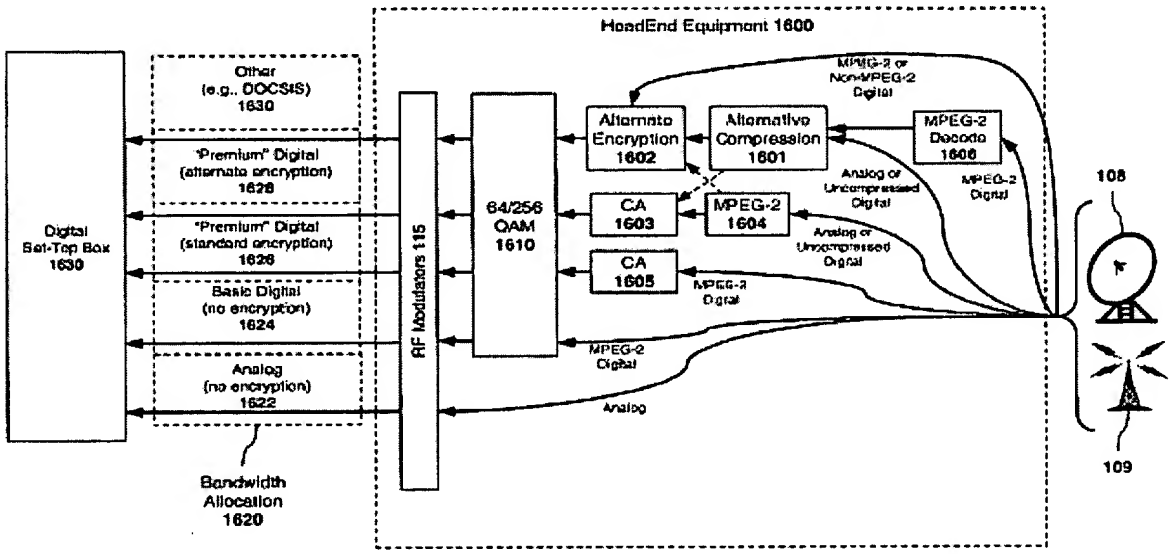

FIG. 16

As discussed on page 9 of the Amendment filed November 22, 2005, simulcasting is understood to mean simultaneously broadcasting each digital stream. For example, a concert may be simultaneously broadcast by radio and television. As another example, it is common for broadcasters to simulcast two versions of a television program in two different languages by using a second audio programming (SAP) channel. English may be broadcast over a channel while Spanish, for example, is simultaneously broadcast over a corresponding SAP channel. For additional simulcasting examples, see http://en.wikipedia.org/wiki/Simulcast.

As discussed on page 10 of the Amendment filed November 22, 2005, Ludtke provides absolutely no discussion of simultaneously broadcasting two versions of the same channel using two different types of encryption. Rather, the portion of Ludtke cited by the Examiner (see Ludtke, col. 7, lines 47-64) clearly teaches that different channels (e.g., HBO, Showtime) could employ different encryption formats or data

structures. Referring to Figure 2 of Ludtke, Ludtke teaches handling the different channels with different formats by selecting from among several different CA control units. See Ludtke, col. 7, lines 61-64 (stating "receiver unit 210 would proceed to identify another CA control unit on the network (e.g., control unit 220a) which can handle the particular CA service in question").

By contrast with Ludtke, the claimed invention broadcasts multiple versions of the same channel or same group of channels (e.g., a group of pay-per-view channels or a group of premium channels) using different types of encryption so that the multimedia receivers do not require the additional hardware and ability to decrypt multiple types of encryption.

On page 2 of the Office Action mailed February 14, 2006, the Examiner responded to the above arguments by stating that "Ludtke teaches simultaneously broadcasting the premium channels, encrypted with a CA encryption, and broadcast stations with a different form of encryption." However, the Examiner does not indicate where Ludtke makes such a teaching. Further, this statement by the Examiner does not teach or fairly suggest simulcasting two versions of the same multimedia content. In other words, Ludtke provides no suggestion that the premium channels are different versions of the same content broadcast at the same time on another channel (e.g., the broadcast stations). Thus, the Examiner's statement is clearly a factual error and the rejection of claim 29 based on Ludtke should be withdrawn.

For at least the foregoing reasons, claims 23 and 56 should also be allowed over Ludtke. Anticipation under 35 U.S.C. § 102 is only proper if the reference shows exactly what is claimed. Titanium Metals Corp. v. Banner, 778 F.2d 775, 780, 227 USPQ 773, 777 (Fed. Cir. 1985); MPEP §2131.01. Regarding claim 23, Ludtke does not teach or suggest "encrypting channels using ***both*** conditional access ("CA") and a different form of encryption; and ***simulcasting*** said channels," as recited, among other things, in claim 23 (emphasis added). As discussed above, simulcasting requires that the same channels be broadcast in different formats or over different mediums at the same time. According to the Examiner, Ludtke teaches broadcasting premium channels encrypted with CA encryption and broadcast stations that use a different form of encryption. However, Ludtke makes no teaching or suggestion that the premium channels and the

broadcast stations are different versions of the same channels being broadcast at the same time. Thus, the rejection of claim 23 is clearly in error and should be withdrawn.

Regarding claim 56, Ludtke does not teach or suggest "encrypting a number of multimedia channels at a headend using conditional access ("CA") encryption to produce a first group of encrypted multimedia channels; ***simultaneously encrypting the same multimedia channels*** at the headend using a different type of encryption to produce a second group of encrypted multimedia channels; ***simulcasting*** said first group of encrypted multimedia channels with said second group of multimedia channels from the headend to a plurality of multimedia subscribers," as recited, among other thing, in claim 56 (emphasis added). As discussed above, Ludtke does not encrypt and simulcast ***the same multimedia channels*** using two different types of encryption. Rather, Ludtke is silent as to the subject matter of claim 56.

2. Hamilton clearly does not teach or suggest simulcasting two versions of the same group of channels using two different types of encryption.

On page 13 of the Office Action mailed March 8, 2005, the Examiner concedes that claim 23 was allowable because the prior art considered by the Examiner at that time, including Hamilton, "does not disclose or fairly suggest ***simulcasting*** the channels encrypted in ***both CA encryption and the different form of encryption*** to subscribers having either a new multimedia receiver or a legacy multimedia receiver." (Emphasis added.) Claim 41 was subsequently amended in the Amendment filed June 3, 2005 to include the limitations of claim 23.

However, as discussed on page 15 of the Amendment filed November 22, 2005, the Examiner continues to reference the earlier claim language of claim 41 rather than the amended language of claim 41. The Examiner's failure to address the amended claim language is a clear error. Claim 41 is currently amended to state, among other things, "modulate said first plurality of multimedia streams ***encrypted in both*** CA encryption and said different type of encryption for ***simulcasting*** to a plurality of multimedia subscribers." (Emphasis added.) Thus, per the Examiner's own statement, Hamilton does not teach the subject matter of claim 41, as currently amended.

Further, as discussed on page 15 of the Amendment filed November 22, 2005, Hamilton discloses a headend for receiving, decrypting, reencrypting, and retransmitting

digital program and control signals. Thus, it is clear that Hamilton does not teach or suggest ***simulcasting*** two different versions of programs having different types of encryption. Rather, it is clear that the retransmission taught by Hamilton is not a simulcast.

In addition, as discussed above, Ludtke also clearly fails to teach or suggest simulcasting the same channels using two different types of encryption. Accordingly, rejection of claim 41 should be withdrawn.

3. The Examiner has not provided any reasons for rejecting claim 57.

As discussed on page 16 of the Amendment filed November 22, 2005, claim 57 was entered in the Amendment of June 3, 2005, but has not been discussed in any subsequent Office Actions. The Office Action Summary for the Office Action mailed February 14, 2006 acknowledges that claim 57 is pending in the application and is rejected. However, no grounds for rejection have been provided so the Applicant can respond to the rejection.

The Applicant notes that claim 57 recites, in part, "means for ***encrypting channels using both*** conditional access ("CA") encryption and a different form of encryption; and means for ***simulcasting*** said channels encrypted in both CA encryption and said different form of encryption to subscribers." (Emphasis added). As discussed in detail above, the references cited do not teach or suggest the subject matter of claim 57. Thus, based on the prior art of record, claim 57 should be allowed.

4. Conclusion

Based at least on the foregoing, claims 23, 29, 41, 56, and 57 are allowable over the art that has been cited and applied by the Examiner. Further, claims 24-28, 31-40, and 43-45, whether under 35 U.S.C. §§ 102 or 103, as depending from claims 23, 29 and 41, respectively. Applicant therefore requests withdrawal of the rejections and allowance of the application at an early date.